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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL COPY

October Term, 1980

No. 80-5132

C. P.,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

On Petition For A Writ of Certiorari To The
District Of Columbia Court Of Appeals

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QUESTION PRESENTED

Whether the District of Columbia courts correctly ruled (1) that petitioner was not interrogated by the police following his invocation of rights to remain silent and to counsel, and (2) that petitioner's confession was a result of questioning by his mother and not the product of any police interrogation.

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STATEMENT

Petitioner seeks review of a decision of the District of Columbia Court of Appeals affirming his adjudication of delinquency, in the Family Division of the Superior Court of the District of Columbia. The adjudication, under which petitioner was placed on court supervised probation, is based upon a finding that he is guilty of attempted armed robbery, in violation of D. C. Code, 1973, §§ 22-2902 and 22-3202.[1] Petitioner contends that introduction at the "fact finding hearing"[2]

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[1] These provisions of the criminal code are made applicable in juvenile proceedings by D. C. Code, 1973, § 16-2301(7), which defines "delinquent act" as, inter alia, an act designated as an offense under the law of the District of Columbia.

[2] Juvenile proceedings in the Superior Court consist of a "fact finding hearing" in which it is determined whether the juvenile committed the "delinquent act" alleged in the petition. A "disposition hearing" is held after it is determined that the juvenile committed the "delinquent act" alleged. The focus of the "disposition hearing" is (1) whether the juvenile is "in need of care or rehabilitation," and, if so, (2) the proper disposition. D. C. Code, 1973, §§ 16-2316, 2317, 2320, 2322.

of a confession made by him while in custody violates his Fifth Amendment privilege against self-incrimination.

The relevant testimony elicited at the fact finding hearing, and at the hearing on the motion to suppress petitioner's confession which preceded it, is essentially as follows:

At approximately 10:30 p.m. on April 29, 1977, the complainant, Karen Johnson, who was driving alone, stopped her car at a red light at 4th Street and Constitution Avenue, Northeast, Washington, D. C. Four juveniles, one female and three males, then approached her. The female was about 14-15 years old; the males were younger, 12-14 years old, and included petitioner (Tr. 55-56, 59). The female told Ms. Johnson that they needed help, and Ms. Johnson reacted by turning around and locking her doors. When she turned forward, she saw that one of the young men was pointing "a very dark steel gun" at her, the type of gun that "you would see on television" (Tr. 55-57). Ms. Johnson then ducked her head, stepped hard on the accelerator, and sped away. She went to a friend's house nearby, where she reported the incident by telephone to the Metropolitan Police Department.

In response to the report, Officers Spooner Underwood and Robert M. Washington, arrested petitioner, another male juvenile, and a female juvenile approximately 15 minutes after Ms. Johnson was accosted. Petitioner and the other male juvenile were each carrying BB gun pistols, which resembled the automatic pistols issued to U. S. military officers (Tr. 61, 63). Officers Underwood and Washington immediately transported the three juveniles to the home that Ms. Johnson was visiting for a show-up identification. Ms. Johnson identified the female juvenile as the person who had approached her 25-30 minutes earlier. She was unable to identify petitioner or the other youth (Tr. 56, 58-59).

The police officers then took the juveniles to a police substation and later to Robbery Squad Headquarters at about 12:00 midnight.

Upon learning the identify of the juveniles, the police contacted their parents and requested that they come to the Robbery Squad offices.

At the time of his arrest, petitioner asserted his right to remain silent.[3] At about 1:30 a.m., petitioner's mother arrived at the Robbery Squad. Officer Underwood told her that charges had been placed against her son, that she could sit with him, and that he (Underwood) would talk to her and petitioner later (Tr. 19). Petitioner was then given a "rights card" printed by the Metropolitan Police Department. Following the reading of the card in his mother's presence, petitioner answered the questions on the card and signed it. He noted on the card that he had been advised of his rights and understood them, that he wished to remain silent, and that he did not wish to answer questions without an attorney (Tr. 6, 18, 21, 38, 49).

Petitioner's mother testified that an officer she was unable to identify told her, upon her arrival at the Robbery Squad, that her son was the only juvenile not talking and that she should get her son to tell what happened because he was in serious trouble (Tr. 31, 37).[4]

About 30 minutes after petitioner provided written answers to the questions on the rights card, Officer Underwood accompanied him and his mother to an office at the Robbery Squad. The officer again advised

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[3] The Court of Appeals has construed the principles enunciated in Miranda v. Arizona, 384 U. S. 436 (1966), as fully applicable to juveniles, accused of delinquent conduct. E.g., In re Creek, D. C. App., 243 A. 2d 49 (1968). This Court has left open the question whether " * * * Miranda applies with full force to exclude evidence obtained in violation of its prescriptions from consideration in juvenile proceedings * * *." Fare v. Michael C., 442 U. S. 707, 717, n. 4 (1979).

[4] The trial court made no express credibility finding regarding this testimony. The Court of Appeals majority questioned whether she was in fact told that she should prevail upon her son to talk. 411 A. 2d at 649.

them that petitioner "had been advised of his rights and that he did not have to make a statement at that time" (Tr. 8-9, 12). He then told petitioner and his mother that he had spoken with the other juveniles arrested with petitioner, that they had confessed, and that they " * * * had put most of the weight on * * * [petitioner] saying he was involved in the crime more than the other[s] (Tr. 8, 19). Petitioner's mother subsequently told petitioner that if he knew anything about the attempted robbery, to "come out with it now and get it over with" (Tr. 9).

Petitioner at first said nothing. However, after repeated urgings from his mother to tell what he knew, petitioner confessed his involvement in the attempted robbery of Ms. Johnson. He admitted having a pistol, but stated that he was not the only one with a pistol. He also stated he had been involved in several other attempted robberies that night (Tr. 10, 32-33, 79). His mother testified that she had not yelled at her son or threatened him with punishment if he failed to make a statement (Tr. 35). Officer Underwood did not ask the mother to tell her son to make a statement. Nor did he ever assert that it would be "better" for him to do so (Tr. 19).

After petitioner made his confession, an oral statement not recorded by the police, petitioner and his mother entered a conference room, where the other two juveniles were seated with their parents. Each juvenile, including petitioner, then described the attempted robbery and the role that he or she played therein (Tr. 11-12, 20). Again, these were oral statements, not recorded by the police (Tr. 20).

At the conclusion of the hearing, the trial court denied the motion to suppress petitioner's statements. Specifically, the court found that petitioner understood his rights. The court also found that petitioner's initial inculpatory statement "was not the result of continued questioning or interrogation by the officers, but was * * * a result of a conversation between the respondent and his

mother" (Tr. 49). The court further stated:

> * * * The Court does not find that the mother employed any kind of coercion or that this was a ploy established or set up by the police for the purpose of inducing the respondent to waive his rights. Indeed it appears to the Court and the Court finds that this respondent was responding to his mother's urging, albeit, in the presence of the officer when he gave the incriminating statement.
>
> * * *
>
> And as far as it appears the officer had respected this younster's indication that he did not wish to speak, and as previously stated there was no questioning by the police (Tr. 49-50).

Upon its review of the record, the Court of Appeals expressed its agreement with the findings and conclusions of the trial court. It, accordingly, affirmed the judgment of the Family Division of the Superior Court. Following denial of a petition for rehearing and suggestion for rehearing en banc, petitioner filed a certiorari petition.

REASONS FOR DENYING THE WRIT

I

Because the police did not engage in custodial interrogation and because the confession was not the product of any action or statement of the police, the decision of the Court of Appeals does not conflict with the decision in Rhode Island v. Innis.

Petitioner requests that the Court exercise its certiorari jurisdiction on the ground that there is a direct conflict between the decision of the Court of Appeals and this Court's decision in Rhode Island v. Innis, ____ U. S. ____, 100 S. Ct. 1682 (1980). No such conflict exists. The communications of the police officers with petitioner and his mother did not constitute interrogation within the guidelines set out in Innis, and petitioner's confession was not the product of police questioning. As recognized by the

trial court and the Court of Appeals, the confession was made upon the urgings of petitioner's mother and was not the product of any acts of the police.

Respondent acknowledges that petitioner was in custody when he confessed to the attempted robbery of Ms. Johnson. Additionally, he had indicated that he wished to remain silent and had requested the assistance of counsel during any interrogation of him by the police. Thus, assuming that Miranda v. Arizona, 384 U. S. 436 (1966), applies with full force to exclude evidence obtained in violation of its prescriptions from juvenile proceedings, petitioner is entitled to suppression of his confession only if it was the product of police interrogation.

Petitioner asserts that two statements by the police constitute impermissible interrogation in violation of Miranda prescriptions. The first of these was the statement, allegedly made to petitioner's mother by an unidentified police officer, that the other juveniles arrested with petitioner were talking and she should tell petitioner to do likewise as he was in deep trouble.[5] Petitioner, in the presence of his mother, was twice given Miranda warnings after that statement was made. The second statement, made at least an hour after the first and preceded by fresh Miranda warnings, was that by Officer Underwood that the juveniles arrested with petitioner had confessed to the attempted robbery and had implicated petitioner. The opinion of the Court of Appeals contains ample support for its holding that these statements do not constitute interrogation. 411 A. 2d 647-648. This Court's decision in Innis does not compel a contrary conclusion.

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[5] As previously noted, the Court of Appeals questioned whether this statement was in fact made to her. See Note 4.

In Innis, this Court established the following guidelines for determining whether statements or other actions constitute custodial interrogation:

> * * * [T]he special procedural safeguards outlined in Miranda are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation. "Interrogation," as conceptualized in the Miranda opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself."
>
> We conclude that the Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response. [Footnotes omitted; emphasis in original; 100 S. Ct. at 1689-90.]

Plainly, Officer Underwood's truthful statement to petitioner and his mother that the other juveniles had confessed was not interrogation within this standard. The statement was declaratory in form and was preceded by fresh Miranda warnings. Thus, both petitioner and his mother were explicitly reminded that petitioner could remain silent and consult with a lawyer. Cf. Michigan v. Mosley, 423 U. S. 96,

106 (1975). Moreover, petitioner continued to assert his right to remain silent after the statement. It was only in response to later questioning by his mother that he confessed.

Viewed in isolation, the earlier statement might be seen as a violation of the Innis standard. However, the Court of Appeals did not analyze it as an isolated statement. It concluded that the statement should be viewed " * * * in the overall setting reflected by the record * * * ." 411 A. 2d at 649. In that setting, it concluded that Miranda standards were not violated.

This statement, under the account given by petitioner's mother, preceded the confession by at least an hour. During that period, petitioner was twice given Miranda warnings in the presence of his mother, and he was permitted to consult with her in private. Given this setting, together with the lengthy lapse of time between the statement and the confession, the statement can hardly be termed "interrogation" as that term has been defined in Miranda or Innis. And, as the Court of Appeals observed, consistent with this Court's observations in Fare v. Michael C., 442 U. S. 707, 727 (1979)(cf. 411 A. 2d at 649), a similar statement, made directly to an uncounseled juvenile, was not an impermissible attempt to induce the juvenile to waive his right to remain silent.

Petitioner has failed to address the alternative holding of the Court of Appeals, sustaining a finding of fact by the trial court, that petitioner's "confession was not the result of police initiated interrogation, but rather of well-intentioned parental influence." 411 A. 2d at 648. This holding, which has strong support in the record, renders irrelevant the question of whether the police engaged in impermissible interrogation.

It is clear that impermissible interrogation, standing alone, does not compel suppression of a confession. As stated in Innis:

> * * * But that [interrogation violating Miranda strictures] is not the end of the inquiry. It must also be established that a suspect's incriminating response was the product of words or actions on the part of the police * * *. [100 S. Ct. at 1691.]

Here, the trial court and the Court of Appeals found that the confession was not the "product" of the alleged constitutional violation. Thus, even assuming there was a constitutional violation by interrogation after Miranda rights were asserted, that violation did not taint the confession and denial of the suppression motion was, accordingly, correct.

II

Because the Court has previously articulated detailed standards for determining whether Miranda rights have been waived, there is no need for the Court to give additional guidance.

Petitioner contends that the Court should grant certiorari on the ground that it has failed to elucidate, in its previous decisions, "the standards for a valid waiver [of Miranda rights] where a suspect * * * invokes his right to remain silent, and his right to the assistance of counsel." He asserts that this Court should "fill" this "gap in Miranda jurisprudence" (Pet. at 9-10).

The Court has previously spoken on this issue on numerous occasions. Under the standards established, a court must engage in the substantive determination of whether a suspect has knowingly and intelligently waived his Miranda rights. North Carolina v. Butler, 441 U. S. 369, 373 (1979). This determination is made upon an analysis of the totality of the circumstances surrounding the confession; it requires that "evaluation [be made] of the juvenile's age, experience, education, background, and intelligence, and whether he has the capacity to understand the warnings given him. * * * " Fare v. Michael C., 442 U. S. 707, 725 (1979); Michigan v. Mosley, 423 U. S. 96 (1975).

The Court of Appeals and the trial court employed this standard. Although petitioner asserts that an additional standard should be elucidated, he fails to state any reason that the existing standard is inadequate or to offer any suggestion regarding the content of the standard he proposes. Clearly, he has not advanced adequate justification for the exercise of certiorari jurisdiction.

CONCLUSION

For the reasons stated, the Court should deny the Petition for a Writ of Certiorari.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Respondent in Opposition was mailed, postage prepaid, this 3rd day of October 1980, to Silas J. Wasserstrom, Esquire, and William J. Mertens, Esquire, Public Defender Service for the District of Columbia, 451 Indiana Avenue, Northwest, Washington, D. C. 20001, Attorneys for Petitioner.

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